

46 Am. Jur. 2d Judges § 128

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

4. Bias or Prejudice as Grounds for Disqualification

a. Bias or Prejudice as Grounds for Disqualification, in General

§ 128. Origin of judge's bias; requirement that bias be extrajudicial—Requirement that bias be personal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(1), 49(2)

The basis of the disqualification of a judge for bias or prejudice is that of personal bias or prejudice, for or against a party, which renders the judge unable to exercise his or her functions impartially in the particular case.¹ A party moving for recusal must show that the trial justice has a personal bias or prejudice by reason of a preconceived or settled opinion of a character calculated to impair his or her impartiality seriously and to sway his or her judgment.² The words "bias" and "prejudice" refer to the mental attitude or disposition of the judge toward a party to the litigation and not to any views that he or she may entertain regarding the subject matter involved.³

Generally, therefore, where the bias of a trial judge against a party is alleged as the basis for recusal, the bias must have derived from a personal rather than a judicial source.⁴ Typically, only bias, prejudice, or knowledge derived from an extrajudicial source is personal.⁵ Where knowledge is acquired in a judicial setting or an opinion arguably expressing bias is formed on the basis of information acquired from evidence presented in the course of a judicial proceeding before a judge, neither that knowledge nor that opinion qualifies as personal.⁶

Observation:

Personal bias cannot be inferred from an adverse ruling.⁷

CUMULATIVE SUPPLEMENT

Cases:

Knowledge obtained by trial judge about the requirements needed to become a certified rehabilitation counselor did not qualify as the type of "personal knowledge" that would require recusal under the Rules of Judicial Conduct, in retaliatory discharge action brought by former employee against nursing home; the judge sought the information because she was unfamiliar with this profession, wanted to determine whether such an expert potentially would be able to provide information helpful to resolving the issues in the case and was considering naming a court-appointed expert but was unsure of the type of expert to appoint, and the judge had no particular familiarity with either party or the expert at issue, and the information she obtained from her communication was not of the kind that would bias her toward either party. *Tenn. Code of Jud. Conduct*, Canon 2.11. [Holsclaw v. Ivy Hall Nursing Home, Inc.](#), 530 S.W.3d 65 (Tenn. 2017).

[END OF SUPPLEMENT]

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Footnotes

- 1 [State v. Nunes](#), 99 R.I. 1, 205 A.2d 24 (1964); [In re Guardianship of Bratton](#), 2014 WY 87, 330 P.3d 248 (Wyo. 2014).
The mandatory disqualification of a judge requires a showing of a personal, individual bias against the litigant. [Zavodnik v. Harper](#), 17 N.E.3d 259 (Ind. 2014).
Judges have an ethical duty to disqualify themselves from any matter in which they have a personal bias or prejudice concerning a party or an attorney appearing before them. [Brunson v. State](#), 293 Ga. 226, 744 S.E.2d 695 (2013).
- 2 [Albanese v. Town of Narragansett](#), 135 A.3d 1179 (R.I. 2016).
- 3 [Hudspeth v. State](#), 188 Ark. 323, 67 S.W.2d 191 (1933); [State ex rel. Mitchell v. Sage Stores Co.](#), 157 Kan. 622, 143 P.2d 652 (1943); [Nelson v. Dodge](#), 76 R.I. 1, 68 A.2d 51, 14 A.L.R.2d 638 (1949).
- 4 [Reeves v. State](#), 580 So. 2d 49 (Ala. Crim. App. 1990); [Sibley v. St. Albans School](#), 134 A.3d 789, 330 Ed. Law Rep. 193 (D.C. 2016); [Scott v. State](#), 175 Md. App. 130, 926 A.2d 792 (2007); [State ex rel. Bardacke v. Welsh](#), 102 N.M. 592, 1985-NMCA-028, 698 P.2d 462 (Ct. App. 1985).
- 5 [Pruitt v. State](#), 903 N.E.2d 899 (Ind. 2009); [Scott v. State](#), 175 Md. App. 130, 926 A.2d 792 (2007).
As to the requirement that bias be extrajudicial, see § 127.
- 6 [Jefferson-El v. State](#), 330 Md. 99, 622 A.2d 737 (1993).
Knowledge acquired in a judicial proceeding is not the personal knowledge that requires disqualification under the Code of Judicial Conduct. [Ferguson v. State](#), 2016 Ark. 319, 498 S.W.3d 733 (2016).
- 7 [State v. Hernandez](#), 1993-NMSC-007, 115 N.M. 6, 846 P.2d 312 (1993).
As to adverse rulings in this regard, generally, see § 141.